

## TITLE 326 AIR POLLUTION CONTROL BOARD

### #96-16(APCB)

#### SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

A Second Notice of Comment Period soliciting comments on amendments to the rule containing amendments to the fugitive dust rule, 326 IAC 6-4, was published on March 1, 1997, with public comments requested from March 1, 1997, through March 30, 1997. A revised Second Notice of Comment Period was published on February 1, 2001. IDEM requested public comment on revised draft rule language from February 1, 2001, through March 5, 2001.

IDEM made substantial changes to the rule between the version published in 1997 and the revised draft published in 2001. This response to comments document focuses on the comments made on the revised version.

The following parties made comments during the comment period that ended March 5, 2001:

American Electric Power	(AEP)
BP Amoco Corporation, Whiting	(Amoco)
Bethlehem Steel	(BES)
City of Indianapolis	(City)
Countrymark	(CM)
Indiana Cast Metals Association	(CMA)
Eli Lilly and Company	(ELC)
ESSROC	(ESS)
Indiana Electric Utility Air Work Group	(EUG)
Ferro Corporation	(FC)
General Cable	(GC)
GE Plastics	(GE)
Hoosier Energy	(HE)
Indiana Coal Council, Inc.	(ICC)
Indiana Manufacturers Association	(IMA)
Indianapolis Power & Light Company	(IPL)
K-T Corporation	(KTC)
NiSource	(NIS)
Quemetco, Incorporated	(QI)
Richmond Power & Light	(RPL)

Following is a summary of the comments received in response to the comment period that ended March 5, 2001.

## **Definitions (326 IAC 6-4.5-2)**

### **“Dust”**

*Comment:* The definition of “dust” should not include liquid material. By its very nature, dust does not include liquid material. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Comment:* In the definition of “dust”, delete the comma after the word “steam”. (ELC) (GE)

*Response:* Existing air rules treat airborne finely divided liquids, excluding uncombined water, as particulate matter, instead of treating liquids separately. This is because finely divided liquids can have effects on health, safety, and property similar to those caused by solid matter. The draft rule and the revised draft rule are consistent with this concept and with the existing fugitive dust rule. The comma after the word “steam” has been deleted to clarify the definition.

*Comment:* The definition of “dust” encompasses particulate matter generated by combustion. Thus, the proposed rule overlaps with the open burning rule. If this is IDEM’s intent, the exemptions in Article 4 must be translated to the fugitive dust rule. (GE)

*Response:* The rules are independent of each other. However, both the fugitive dust rule and the open burning rule (326 IAC 4-1) can overlap when the smoke from open burning is crossing the property line at ground level. Open burning provisions include requirements to manage and control smoke from crossing a property line or creating a nuisance.

### **“Excessive wind speed”**

*Comment:* IDEM should evaluate the definition of “excessive wind speed”. Provide a basis and justification for a one-hour average wind speed of 30 mph or an instantaneous wind speed of 40 mph. Based on review of fugitive dust regulations for other Midwestern states, Illinois provides an exemption from fugitive dust control requirements when the one-hour average wind speed exceeds 25 mph. (EUG) (HE) (IPL) (NIS)

*Comment:* We agree that a definition of “excessive wind speed” is beneficial. However, it is recommended that the wind speed for the one-hour average be lowered. According to the National Weather Service (NWS), the average wind speed in Indiana is 9.8 mph. The NWS issues a wind advisory beginning at 25 mph sustained winds. Additionally, it is recommended to clarify the hourly wind speed. The wording suggests only one reading is used to calculate the hourly average because only the hourly recorded value is needed. (City) (ICC)

*Comment:* If IDEM continues to retain a methodology that includes instantaneous observations of fugitive dust crossing a company’s property line, an exemption based on an instantaneous wind speed (gusts) should be included in the exemptions clause and the gust speed should be 35 mph. (EUG) (IPL)

*Comment:* The definition of “excessive wind speed” appears to be exclusive of all potential fugitive dust observations other than upwind/downwind monitoring. Meteorological data from the nearest source should be available for use in evaluating all potential fugitive dust situations whether monitored or visual. (ELC)

*Comment:* Delete the rule language specifying particulate matter monitor height. It is confusing, and is already included under Section 3(1)(D), which should also include specific requirements for meteorological data. (ELC)

*Response:* IDEM has proposed that “excessive wind speed” be defined at the 30 mph hourly average to be consistent with U.S. EPA’s guidelines for ambient monitoring of particulates, “Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events”, EPA-450/4-86-007, July 1986. An “exceptional event” is one where the wind conditions are such that industrial or other sources should not be held responsible for excessive dust conditions. The 30 mph hourly average is an appropriate measure for fugitive dust conditions in Indiana that should not be considered the responsibility of the source. For upwind/downwind monitoring described in the rule, a continuously recording wind speed (WS) and wind direction (WD) meteorological instrument will be operated in conjunction with one of the particulate monitors, allowing IDEM to determine excessive wind speed as well as to verify upwind/downwind quadrants. U.S. EPA’s guidance document defines “high winds” as gusts equal to or greater than 40 mph; IDEM will add this language to the rule. The abovementioned guidance was established for a national application using average wind speed conditions from all states. IDEM believes that 30 mph is a reasonable level for an exceptional event in Indiana. If additional evidence can be produced to support lowering this hourly average to 25 mph, IDEM would be willing to discuss this further.

The comments are correct that the National Weather Service and U.S. Weather Bureau do not record hourly averages of wind speed. IDEM has revised the draft rule to provide that IDEM will use the closest state, local, or industrial meteorological station that collects continuous WS data according to quality assurance procedures provided in Chapter 9 of the Indiana Quality Assurance Manual (June 1997).

### **“Fugitive dust”**

*Comment:* The definition of fugitive dust should be modified to be consistent with the long-standing and well-recognized definition of fugitive dust: dust emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (Amoco) (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Comment:* Point sources should not be included in the definition of fugitive dust. Emissions of regulated pollutants from point sources are specifically regulated by their permits and other rules in the Indiana state implementation plan (SIP). (Amoco) (CMA) (EUG) (HE) (IPL) (NIS)

*Comment:* The proposed definition of fugitive dust will include emissions from properly operated and maintained facilities which are in compliance with their permits. (FC)

*Comment:* If surface coal mining operations are not exempt from this rule, the definition of fugitive dust should be expanded to include property line or property boundary, right-of-way, or easement, or the surface coal mine permit boundary. (ICC)

*Response:* Although IDEM has included a definition of fugitive dust in this draft rule that differs somewhat from the current rule, IDEM does not intend to change the general focus of the fugitive dust rule with this rulemaking. The fugitive dust rule has always applied to point sources. The proposed revisions to the rule maintain the existing applicability of the fugitive dust rule to point sources. As noted in the comments, permit conditions or other rules may impose additional limitations on, or otherwise regulate, point source emissions. Maintaining the applicability of the fugitive dust rule to point sources would in no way relieve a source from complying with other applicable requirements. The fact that additional limitations may apply to a point source does not relieve a point source from maintaining adequate dispersion of its emissions. Compliance with all applicable requirements will, in most cases, mean the source will not generate observable excessive fugitive dust.

The opacity rule regulates the visible emissions, or opacity, of the plume, typically at the stack exit. The fugitive dust rule regulates adequate dispersion of the plume once it crosses a property line where it would most affect the public.

*Comment:* The definition of “fugitive dust” is unreasonable in that a source could be held responsible for fugitive dust emissions that originated from off the property. (NIS)

*Response:* Sources are responsible for any fugitive dust originating from their property, but are not responsible for dust upwind of their property. The definition of “fugitive dust” addresses this issue in part because a fugitive dust source means any fugitive dust-emitting location, process, operation or activity. A source that is “emitting” or generating dust that blows across a property line is subject to the rule. This issue is also addressed by the finding of excessive fugitive dust through the measurement of both upwind and downwind concentrations, visual observation of the dust, or secondary deposition analysis, as applicable.

### **Finding of Excessive Fugitive Dust** (326 IAC 6-4.5-3)

#### **General**

*Comment:* We recommend either deleting 326 IAC 6-4.5-3 or rewriting it to address only visible fugitive dust emissions from specified sources that is observed crossing property lines. (EUG) (IPL)

*Response:* IDEM does not agree with the recommendation to delete 326 IAC 6-4.5-3, Finding of Excessive Fugitive Dust. Section 3 provides the circumstances under which the department will issue a finding of excessive fugitive dust. A finding of excessive fugitive dust results in the requirement for a source to create a fugitive dust control plan. Compliance with an approved fugitive dust control plan should reduce excessive fugitive dust to the extent practicable.

*Comment:* The Authority and Affected statutes for this section do not address enforcement of regulations, but rather the adoption of the proposed language. What is the authority of the agency to include this new enforcement procedure? How will IDEM implement it? (ELC)

*Response:* The Indiana Air Pollution Control Board has authority under IC 13-17-1 to adopt rules to protect Indiana air quality and address sources of air emissions. The Indiana Department of Environmental Management has authority under IC 13-14-2 and IC 13-30 to implement those rules, including compliance and enforcement activities where appropriate. IDEM has proposed an approach that begins with a finding of excessive fugitive dust and requirement to prepare a fugitive dust control plan because it directly addresses the fugitive dust problem. This is a reasonable approach that focuses primarily on addressing the air pollution problem.

*Comment:* Use of the 22.5E wind variation in both the upwind and downwind directions is too broad. Specify the wind direction in one half of a STAR wind direction sector (11.25E) at the upwind area and the downwind direction is 180E from that wind direction sector that already includes the 11.25E of variability. (NIS)

*Response:* IDEM set the twenty-two and five-tenths (22.5) degree sector because if the wind stays within that quadrant, the emissions are coming from the site. IDEM is confident of this based on its past experience.

*Comment:* The draft rule language in section 3(1)(C) needs to be clarified to have both upwind and downwind monitors operate simultaneously, with both upwind and downwind monitors starting within one minute of each other and shutting down within one minute of each other. (NIS)

*Response:* The department agrees and the draft rule language has been clarified.

*Comment:* It would be appropriate to include specific requirements for monitors and meteorological data under Section 3(1)(D). (ELC) (GE)

*Comment:* Fugitive dust should be viewed as a ground-level event. Placing monitors between 2-15 meters above the ground takes monitoring beyond ground-level events. (CMA) (IMA)

*Response:* The 2-15 meter range is the federal ambient monitoring range for monitoring ground level events. This range is widely accepted and used by U.S. EPA, states and local agencies for probe placement of ambient monitoring of ground level emissions. However, IDEM can foresee no application for conducting this monitoring above five meters and, therefore, will modify the rule to set the monitor probe height at 2-5 meters above ground level.

**50 ug/m<sup>3</sup> standard/one hour standard** [326 IAC 6-4.5-3(1)]

**High-volume sampling** [326 IAC 6-4.5-3(1)(F)]

*Comment:* The techniques described in proposed paragraph (F) should be spelled “high volume sampling”, based on 40 CFR 50 Appendix B. (GE)

*Response:* Based on the language in 40 CFR 50, Appendix B, IDEM has changed “hi-volume” to “high-volume”.

*Comment:* IDEM’s proposed fugitive dust exceedance of 150 ug/m<sup>3</sup> for one hour is too stringent. (FC) (IMA)

*Response:* The current rule does not establish 150 ug/m<sup>3</sup> as an “exceedance” level, but focuses instead on whether the source would contribute at least 50 ug/m<sup>3</sup> to ambient air that already contains a relatively high level of particulate. Under the current rule, if a source contributed 50 ug/m<sup>3</sup> or more it would be considered a violation even if the background level was extremely low. IDEM believes the draft rule language, which contains both an ambient level that is considered to be unhealthy and a delta for which the source would have to be determined to be responsible, is more carefully targeted to addressing serious air quality problems.

IDEM also believes that the specific standards included in the rule are appropriate. The 150 ug/m<sup>3</sup> standard is the number that U.S. EPA established as the welfare-based standard under the national standard for total suspended particulates (TSP). A 50 ug/m<sup>3</sup> increase represents 33% of that welfare-based standard and 67% of the prior health-based TSP standard of 75 ug/m<sup>3</sup>.

*Comment:* The 60-minute monitoring period is inconsistent with the 24-hour test method set forth in 40 CFR 50, Appendix B. IDEM has not determined that the accuracy and precision of the Appendix B method will not be adversely affected by using a much shorter sampling period. The rule should specify the same time period as the sampling and analysis method. (GE)

*Response:* As required by P.L. 123-1996, IDEM evaluated the 60-minute time period for upwind/downwind monitoring. IDEM has retained this time period for several reasons. Many fugitive dust events do not last significantly longer than 60 minutes, and, if averaged over many hours, a very serious, although short-term, fugitive dust event might be considered in compliance with the rule. Moreover, wind direction shifts frequently, so it may not be possible to monitor upwind/downwind for several hours, even though the wind can blow long enough in one direction to cause a fugitive dust problem. Many of the sources IDEM regulates are not in operation 24 hours per day. However, fugitive dust problems are often short-term and cannot be effectively regulated by averaging over 24 hours.

IDEM has discussed this issue with U.S. EPA, who has confirmed that this methodology is appropriate to use for monitoring periods shorter than 24 hours. U.S. EPA agrees that using the total number of minutes that the monitor ran to determine total air volume for the calculation of mass

concentrations is an appropriate application of the high-volume method addressed in 40 CFR 50, Appendix B.

*Comment:* Clarify section 3(1)(E), requiring wind direction remain consistent for 95% of the monitoring time period. How can IDEM determine if the wind direction is consistent? (City)

*Response:* For upwind/downwind monitoring purposes, IDEM will conduct meteorological monitoring at one of the two particulate monitoring sites to determine wind direction consistency. In addition to on-site measurements, IDEM may use meteorological data from the closest state, local, or industrial operated meteorological site that meets quality assurance requirements.

*Comment:* The proposed rule goes far beyond what is necessary to achieve compliance with NAAQS. Fugitive dust is not a regulated pollutant. (CM) (BES) (ESS) (GC) (ICC) (KTC) (QI) (RPL)

*Comment:* There are no data to support the health claims IDEM has used to justify its approach. We support implementation of a chronic standard of at least three violations and only if that number is exceeded would a fugitive dust plan be required. (CMA)

*Comment:* The rule serves no useful purpose to evaluate the impact on public health unless the downwind particulate matter concentrations are averaged over a 24-hour period consistent with the particulate matter short-term ambient air quality standard. If such an approach is used to assess the impact of fugitive dust on ambient air, IDEM needs to ensure that high-volume sampler filter pad analyses are performed on the particulate matter samples to determine the appropriate source of the fugitive dust. (EUG) (IPL)

*Response:* The Clean Air Act charges U.S. EPA with developing national standards for certain key air pollutants. States have clear legal authority to implement additional requirements, especially to address localized air pollution issues, such as fugitive dust. Moreover, Indiana law provides that it is the purpose of air pollution control laws to “maintain the purity of the air resource of Indiana, which shall be consistent with protection of the public health and welfare and the public enjoyment of the air resource, physical property and other resources, flora and fauna, maximum employment, and full industrial development of Indiana.” (IC 13-17-1-1)

This rule is not intended to determine compliance with the respirable particulate NAAQS but is intended to determine the impact of fugitive dust from specific sources on citizens and properties located downwind of these sources. The methodology outlined in this rule is the high-volume method for determination of total suspended particulates and encompasses particulate matter much larger than PM<sub>10</sub>. Given IDEM’s statutory mandate to protect the air resource through prevention, abatement, and control of air pollution (IC 13-17-1-1), IDEM believes this rule is warranted. IDEM has received an average of 120 complaints per year in the last six years. Fugitive dust is a real air quality issue for many citizens who expect the department to provide relief.

*Comment:* The rule should not be submitted as a SIP amendment because it has nothing to do with NAAQS. (CM) (BES) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Response:* The fugitive dust rule is part of Indiana's approved SIP for TSP. The department will discuss the need for a SIP amendment with U.S. EPA.

*Comment:* The rule should state that it is not an applicable requirement for purposes of the Title V permitting program under 326 IAC 2-7. (CM) (BES) (ESS) (GC) (KTC) (QI) (RPL)

*Response:* IDEM disagrees. The state fugitive dust rule is an applicable requirement and will be included in Title V permits. Submission of a fugitive dust control plan to address a finding of excessive fugitive dust does not require a revised application.

*Comment:* We support section 3(1) that details the downwind concentration in exceedance of 150 ug/m<sup>3</sup> prior to being a violation. By detailing the requirement for "dirty air," the upwind/downwind testing will become more effective in determining whether a problem exists. (City)

*Response:* IDEM agrees.

#### **Visible emissions crossing property line [326 IAC 6-4.5-3(2)]**

*Comment:* This rule would penalize a source for visible dust crossing the property line even if the dust presents no health hazard. IDEM has not explained why visible dust that presents no health concerns should be regulated. We request the approach in the current rule be maintained in any new rule. (GE)

*Comment:* There is no indication of the duration of observation needed to make the determination of the fugitive dust crossing the property line nor the specification of the "opacity" threshold needed to qualify the observation as a valid occurrence of fugitive dust crossing the property line. Both specifications should be added to the rule. (NIS)

*Response:* The visible emissions standard included in the draft rule is essentially the same as the one in the existing rule. Because upwind/downwind monitoring is not feasible in most situations because of limitations on monitors and staff availability and because they cannot monitor fugitive dust events spontaneously, some type of visible emissions observation is essential for implementation of this rule. If an inspector observes visible dust crossing the property line, that is a clear indication of emissions that create some impact on downwind neighbors. Often, an observance of visible emissions corroborates other indications that dust is escaping a source's property, such as observable dust on neighbors' property or likely sources of fugitive dust (e.g., dry piles or dusty roads) on the source's property.

IDEM understands the commenter's desire for a numeric standard or threshold amount of fugitive dust; however, it is difficult to apply the opacity standard due to the limitations of Method 9. These limitations include positioning, observations before sunrise or after sunset, and averaging for intermittent emissions. IDEM will continue to discuss this issue with interested parties; however, and consider

whether Method 22, which applies to fugitive emissions, could be applied or adapted for the purposes of this rule.

*Comment:* The observation should be made in accordance with the procedure of Method 9. The observer should also be currently certified in accordance with Method 9. (ELC) (NIS)

*Comment:* Define “local agency” to include only local air pollution agencies. To have other than trained air agency officials able to conduct these inspections would be inappropriate. (ICC)

*Response:* The department can and has used other offices and agencies to address fugitive dust complaints and fugitive dust sources. This is an effective manner to address local and regional fugitive dust complaints and problems. All designated representatives must be trained in Method 9.

*Comment:* Incorporate U.S. EPA Method 22 into this rule in addition to Method 9. Method 22 is more appropriate for evaluating fugitive dust from vehicle traffic and material handling activities that are routinely found at power plants and other industrial facilities. By using Method 22, sources will be better able to properly measure and quantify the effects of fugitive dust emissions because of facility activity. (AEP)

*Response:* Method 22 may be a possible solution with an opacity limitation defined in 326 IAC 6-4, but IDEM would need to amend Method 22 to include emissions from stacks and vents and set an instantaneous limit or standard. IDEM will consider the use of Method 22 prior to final adoption.

*Comment:* It is recommended that subsection (4) be deleted since it applies to plumes from a stack or vent. Point sources such as stacks or vents should not be included in this rule because they represent other types of air pollution sources subject to different regulatory requirements. (EUG) (IPL)

*Comment:* The proposed rule should be related to fugitive emissions at or near ground level. (Amoco) (CM) (BES) (ESS) (GC) (KTC) (QI) (RPL)

*Response:* A source that is regulated by opacity regulations is also subject to fugitive dust rules if plumes from that source are not adequately dispersing. If a plume is adequately dispersing, then it is not fugitive dust. The revised draft rule, at 326 IAC 6-4.5-5(4), specifically exempts, from the definition of “fugitive dust,” plumes from a stack or vent that:

- (1) are visible when crossing the property line;
- (2) do not downwash to less than ten meters above the ground;
- (3) are in compliance with other applicable rules; and
- (4) have no finding of fugitive dust based on secondary deposition analysis.

### **Secondary deposition analysis [326 IAC 6-4.5-3(3)]**

*Comment:* The proposed rule should define the term “secondary deposition analysis” and describe the procedures for performing this analysis. (City) (CMA) (ELC) (NIS)

*Comment:* Provide guidance for using secondary deposition analysis to make a finding of excessive fugitive dust. Specify the methodology, controls and quality assurance measures to ensure the proper source is identified. (ICC)

*Comment:* Section 3(3) regarding excessive fugitive dust determined through secondary deposition analysis should be deleted. It is unreasonable and unfair. It would be impossible for a source to demonstrate if an exception applied. (CM) (BES) (ESS) (FC) (GC) (KTC) (QI) (RPL) (GE)

*Comment:* Allowing a determination of fugitive dust as provided in the rule language does not consider other possibilities for the deposition of the dust. There is also no limit or cap on the number of samples that may be taken, and no provision for allowing the suspected source to take a similar sample on the same day. (CMA) (ELC) (IMA)

*Comment:* In regard to subsection (3), IDEM should specify the “accepted sampling procedures” so the results of an analysis of secondary deposition can be replicated by the affected source to verify or refute IDEM’s determination of fugitive dust impacts off plant property. (EUG) (IPL)

*Comment:* The vague language in Section 3(3) allows the agency great leniency in making determinations. Establish a prescriptive method by detailing “accepted sampling procedures”. Without standardized procedures, the rule is unenforceable. (ELC) (GE)

*Response:* IDEM has experience with situations in which it was evident that a downwind area was the recipient of fugitive dust, but emissions were not visible and upwind/downwind monitoring was not feasible. Analysis of dust particles may not be conclusive in all cases, but in some cases may clearly identify the source of the dust.

The methodologies used to conduct particulate monitoring and wind speed and wind direction determinations will be consistent with methodologies approved in 40 CFR 50 App B. IDEM will follow “The Quality Assurance Handbook for Air Pollution Measurement Systems,” Volume IV Meteorological Measurements EPA/600/R-941038d, March 1995, which includes continuous monitoring of meteorological data. IDEM will support any finding of excessive fugitive dust with documentation of the methodology used.

The accepted methodologies used to collect particulate samples for secondary deposition analysis and the methodology for microscopic analysis of particulate matter are outlined in a four volume document entitled The Particle Atlas by McCrone Microscopy Lab. Any microscopic analysis performed by IDEM, or by an outside lab for IDEM, will be conducted in accordance with this document.

*Comment:* The language in Section 3(3) is vague. It does not include the right of a source to dispute a finding. Subsection (3) should either be deleted or an appeal process should be added to include the right to conduct additional analyses to disprove a claim made. (AEP) (IMA)

*Comment:* A rule that uses such vague and unintelligible standards as in Section 3(3) is incapable of uniform enforcement. IDEM should retain the ability for a source to rebut the finding of excessive fugitive dust. (ICC)

*Comment:* While IDEM has consistently indicated a first-time violation would result only in a mandated fugitive dust control plan, it clearly defines this as a “violation”. The rule language should include the final action as subject to appeal. (CMA) (IMA)

*Response:* IDEM does not believe that the language in this subsection is vague or unintelligible. Indiana law provides for appeal of all final determinations made by the agency. Certainly if IDEM based an enforcement action on the results of secondary deposition, there will be an opportunity for the source to rebut or challenge the agency’s finding. Appeals and appeal procedures are available through the IC 4-21.5 upon final agency action.

**Fugitive dust control plan** (326 IAC 6-4.5-4)

*Comment:* Isolated incidences of fugitive dust violations should not trigger the requirement for a fugitive dust control plan. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Comment:* A defined violation limit should be included with this rule that would trigger the need for a fugitive dust control plan. (AEP)

*Response:* The limit contained in the rule is “no visible emissions crossing the property line”. There are several exceptions to this limitation listed in the rule. To avoid most isolated incidences, a fugitive dust control plan should be as easy to implement as developing good work practices. It is the intent of this rule not to eliminate but to minimize dust where practicable.

*Comment:* The existing control plan language at 326 IAC 6-5-3, 326 IAC 6-5-4, and 326 IAC 6-5-5 has worked well in the State’s nonattainment areas and should be considered as appropriate for the current rulemaking. (Amoco) (CMA)

*Response:* 326 IAC 6-5 requires a fugitive dust plan in certain specified areas of the state. Other rules may require plans for certain sources. The proposed rule would require a plan where there has been a finding of excessive fugitive dust and the rule would apply to sources statewide.

*Comment:* Section 4(c)(5)(B) should be deleted. Particulate collection equipment is applicable to stack sources, not fugitive sources. (NIS)

*Response:* IDEM disagrees. It may be necessary to modify existing control equipment in order to ensure that under unusual circumstances or meteorological conditions excess fugitive dust does not occur as a result of the particular process.

*Comment:* Section 4(c) is vague. Modify this section by replacing the word “origin” with more specific language. (GE)

*Response:* IDEM agrees and has clarified the language.

*Comment:* We are concerned with potential delays in compliance by allowing a facility 30 days to respond to IDEM’s finding of excessive fugitive dust. The nuisance of fugitive dust may continue for the

period of time up IDEM's notification of the requirement of a fugitive dust control plan for the facility and through the period of IDEM's receipt of the proposed plan from the facility. (City)

*Comment:* The rule should allow for more than 30 days to submit a fugitive dust control plan. (BES) (CM) (CMA) (ELC) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Response:* IDEM believes that 30 days following the receipt of a written finding of excessive fugitive dust is a realistic and reasonable time period for sources to submit a complete and accurate fugitive dust control plan, but has provided an opportunity for an extension when justified. IDEM inspectors also inform source operators at the end of the inspection when they have observed fugitive dust and would identify measures that could be implemented very quickly, even while the fugitive dust control plan is being prepared.

*Comment:* The proposed standard of "to the extent practicable" is ambiguous. It would be impossible to know if this standard had been met, and that it had been implemented fairly and consistently. (CMA) (GE)

*Response:* IDEM recognizes that there may be some situations where it would be extremely costly, to the point of being prohibitive, to totally eliminate any possibility of fugitive dust. Including the phrase "to the extent practicable" is recognition that the department does not intend to require control measures that go beyond what can be reasonably determined as practical measures.

*Comment:* The rule language concerning control plan requirements needs to be clarified. The control plan requirement should apply to both an initial finding of excessive fugitive dust and any subsequent findings. (GE)

*Response:* Subsequent findings of excessive fugitive dust may mean the initial plan is not adequate or it is not being implemented. Subsection (i) includes a procedure to amend the plan if necessary.

*Comment:* The control plan requirement should specify the owner or operator of a source to submit the control plan. (GE)

*Response:* The draft language has been changed.

*Comment:* The rule should include defined time periods for IDEM to review a fugitive dust control plan. (AEP) (City) (ELC)

*Comment:* The rule should include a defined time period for the department to respond to a source's request for amending or withdrawing the control plan. (ELC)

*Response:* The department and local agencies will make every effort to expedite the review and implementation of fugitive dust control plans.

*Comment:* Once a fugitive dust control plan has been approved or designed by IDEM, what mechanism does IDEM have if the approved plan is inadequate? A provision should exist for a source to submit amendments or modifications to an inadequate control plan. (City) (CMA) (GE)

*Comment:* Amendments to a fugitive dust control plan should not be required to ensure it is current with activities causing excessive fugitive dust at the source. (ICC)

*Comment:* An appropriate implementation period should be included with any control plan. (CMA) (ELC)

*Comment:* The rule should allow the facility to modify a plan within an acceptable time frame. (NIS)

*Response:* If IDEM feels the plan is inadequate, IDEM will discuss this with the source and request that the plan be modified. In addition, if particular remedial measures will take longer, IDEM will work with the source to develop an implementation schedule that is reasonable under the given circumstances.

*Comment:* Specify in the rule language that a department-issued control plan be no broader in scope than required by subsections (b) and (c) of the proposed rule. (GE)

*Response:* IDEM agrees and has modified the draft rule.

*Comment:* Which of the “actions” would be considered an “agency action” or “order” as defined in the Administrative Orders and Procedures Act, and for which the source could seek review? Does the agency have the resources to issue an order with prescriptive control measures in such a time period that it can be implemented in the proposed 30-day period between notice and submittal? Reference should be made in the rule under what authority the department would issue an order. (ELC)

*Comment:* Any finding of excessive fugitive dust is an agency action subject to review under IC 4-21.5. In addition to the 30-day time frame, the rule should provide the legal rights to delay submitting a fugitive dust control plan until after exhausting available administrative remedies. (ICC)

*Response:* IC 4-21.5-3 determines which agency actions are appealable. If a determination of the department is appealed, the procedures of the administrative process will be available to the source, including requests that the agency action be stayed pending approval.

*Comment:* In the event that a source does not reply to IDEM’s request to submit a fugitive dust control plan, IDEM should not issue a fugitive dust control plan for the source. The source should be subject to enforcement action, especially if the fugitive dust problem is ongoing. (City)

*Comment:* IDEM should make only suggestions for a source’s fugitive dust control plan. The source itself should have the final say. (CMA)

*Response:* IDEM strongly agrees that the source is in the best position to develop a control plan, and considers an IDEM-developed plan to be a last resort, only where the source does not take this responsibility on themselves. There may be cases, however, where a source is unwilling to develop a plan or take steps to address fugitive dust. Under those circumstances, IDEM has the responsibility to

take steps itself to reduce the impact of fugitive dust on downwind neighbors. This is consistent with the draft rule's emphasis on remedial action.

*Comment:* The basis for a finding of excessive fugitive dust should not be a violation, which would allow IDEM to impose penalties. Rather, IDEM should rely on the provisions set forth in proposed 326 IAC 6-4.5-4(m) for enforcement of the rule. (BES) (CM) (ESS) (GC) (KTC) (QI) (RPL)

*Comment:* We request the department use existing enforcement procedures. (ELC)

*Response:* IDEM's intent with this draft rule is that the first step will always be development and implementation of a fugitive dust control plan. Traditional enforcement could be pursued if efforts to handle the issue through development of the plan were unsuccessful.

*Comment:* Will the agency notify the source of a finding of excessive fugitive dust? Who determines the type of control plan to be developed? (ELC)

*Comment:* Section 4 of the rule is too broad. A fugitive dust control plan should only be required for the specific activities causing excessive fugitive dust, not for the entire site. Additional information should only be provided to IDEM if it is necessary to implement or review the control plan. (BES) (CM) (CMA) (ESS) (FC) (GC) (GE) (ICC) (KTC) (NIS) (QI) (RPL)

*Comment:* Subsection (4) is overly prescriptive. This information can change rapidly and is not necessary for developing a useful control plan. (ELC)

*Response:* Section 4(b) requires either a source-wide fugitive dust control plan or a specific plan, depending on whether the activities associated with the fugitive dust can be identified. Sections 4(c)(3) and 4(c)(4) require specific information about all processes and actions that emit or have the potential to emit fugitive dust, requiring that the source identify and evaluate these areas. A source-wide plan is not necessary, provided that the specific unit or area causing the dust can be identified. IDEM has amended sections 4(c)(3) and 4(c)(4), in the revised draft rule, to provide that, when the origin of the excessive fugitive dust can be reasonably identified, only those processes, areas, and materials relating to the origin shall be identified. Under 4(c)(7), IDEM would notify the source and specify the necessary information needed to complete a review of the plan.

*Comment:* Are monetary and personnel costs and/or the source's financial condition considered when determining what is "practicable"? (FC)

*Comment:* The rule should only require measures that are at a reasonable cost given the particular fugitive dust concern. (BES) (CM) (ESS) (GC) (KTC) (QI) (RPL)

*Comment:* IC 13-17-1-1 and IC 13-17-3-4 provide that a rule be limited to "safeguarding the air resource...by all practical and economically feasible methods". A fugitive dust control plan should include only practical and economically reasonable measures to correct excessive fugitive dust. (ICC)

*Response:* IDEM does not expect the costs to be significantly different than those currently associated with compliance with the rule. There may be some additional costs in writing a fugitive dust control plan.

*Comment:* The rule should not require that the operating permit include any approved fugitive dust control plan. This would make amending the plan more difficult and could cause the plan to become federally enforceable. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Comment:* The control plan should be treated like a preventative maintenance plan and kept separate from permits. (CMA)

*Comment:* The rule should not impose record keeping and reporting requirements beyond those required in a Title V or FESOP permit. (ICC)

*Comment:* The control plan should not be required to be incorporated into the operating permit, but submitted to the agency and available on site for review. (ELC)

*Response:* The rule has been revised to provide that the requirement to have a fugitive dust control plan and may be included in the permit, but the plan itself is not included in the permit.

#### **Exceptions** (326 IAC 6-4.5-5)

*Comment:* The exception for stacks or vents appears to be contingent upon proof that no excessive amount of dust exists. This rule is broad. It places an increased burden of proof on the regulated community. (IMA)

*Comment:* It is unnecessary for a unit of government to submit a road improvement schedule in order to be exempt from this rule. Road improvements and planning should be left to the local units of government, state and federal DOT. (FC)

*Response:* The purpose of the fugitive dust rule is not to eliminate, but rather to minimize dust where practicable. The exceptions in the rule are situations where IDEM believes further control is impractical.

*Comment:* What square footage of bird or bat droppings “at least two (2) inches thick” is large enough to trigger requirements under Section 5(2)? Health departments are responsible for the prevention of histoplasmosis and other diseases. They should have the ability to propose rules to control the spread of disease and should be allowed to do so without well-meaning interference from IDEM. (FC)

*Comment:* This section needs clarifying. It would seem that any droppings would be of concern and cause for not exempting such a situation. (NIS)

*Response:* The department is discussing this comment with the State Department of Health to provide more clarity on these issues.

*Comment:* IDEM proposes replacing “best management practices” with “every reasonable precaution”. We are unaware of the use of this term in other regulatory settings and believe the former provides more clarity. (Amoco) (CMA)

*Response:* The department is not proposing a change. The current rule uses “every reasonable precaution” and the draft rule language uses the same language.

*Comment:* For the purpose of determining whether a fugitive dust issue exists, it should not matter if a plume from a stack or vent is in compliance with other applicable rules. Imposing a violation of the fugitive dust rule when there is no fugitive dust problem has no rationale. (GE)

*Response:* IDEM does not intend to issue findings of excessive fugitive dust where there is no fugitive dust problem.

*Comment:* Stack sources in compliance with all other requirements should be exempt. (BES) (CM) (CMA) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Comment:* An exemption should exist for sources whose fugitive emissions are already regulated by a MACT/NESHAP standard or other rule containing fugitive dust requirements. (QI)

*Comment:* Section 5(4) should be deleted. It applies to plumes from a stack or vent which should not be included in this rule because they represent other types of air pollution sources already subject to different regulatory requirements. (HE)

*Response:* The purpose of this rule is to control fugitive dust escaping beyond property lines. It may address fugitive emissions regulated by other rules but only applies where a plume does not adequately disperse and crosses the property line.

*Comment:* Under Section 5(4), clause “(D)” should be added before “and there is no finding of excessive fugitive dust...” (City).

*Response:* IDEM disagrees. The rule language is grammatically correct as written.

*Comment:* An exception should be allowed for more meteorological situations than excessive wind speed or drought. (BES) (CM) (CMA) (ESS) (FC) (GC) (KTC) (QI) (RPL)

*Response:* IDEM specifically included in the rule only those meteorological conditions that affect fugitive dust: excessive wind speed and drought. Other meteorological conditions occurring in Indiana do not provide a basis for an exception to the fugitive dust requirements.

*Comment:* IDEM’s response to our initial comment that surface coal mining received the same exemption as agricultural operations, construction and demolition activities, and public roads was not adequately justified. Coal mining is already regulated by the Surface Mining Control and Reclamation Act, which imposes fugitive dust control plans on surface coal mining operations. (ICC)

*Response:* The nature of coal mining, which is essentially a manufacturing process, is different from the activities currently listed as exempt from the rule. For many processes in a coal mining operation, reasonable controls are available to minimize fugitive dust. IDEM does recognize that coal mining has unique characteristics and would like to discuss with the industry further the possibility of developing a nonrule policy or guidance document to address fugitive dust generating from surface coal mining activities.

### **Motor vehicle dust sources** (326 IAC 6-4.5-6)

*Comment:* Contents from “dripping, sifting, leaking or otherwise escaping from vehicles” are already covered under DOT regulations and should be deleted from this rule. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

*Comment:* There is no justification for shifting responsibility for trucks to the property owner and away from trucking operators. The issue was addressed in the current 326 IAC 6-4-4. (CMA)

*Response:* Fugitive dust generated by motor vehicles or commercial property can be a real problem and IDEM believes it should be the responsibility of both the vehicle owner or operator and the property owner to take steps to avoid generation of fugitive dust. While this subject may be covered by U.S. DOT regulations, the language is also needed in the state rules.

*Comment:* It is unclear who is responsible for submitting a long-range schedule for necessary road improvements to the department. (NIS)

*Response:* IDEM has revised the rule language to clarify that the unit of government responsible for maintenance of the roadway would be responsible for developing a schedule of improvements.

*Comment:* Provide guidance as to the criteria for considering mud an environmental hazard or include in this rule all vehicles that track mud. (FC)

*Response:* IDEM is regulating only the tracking of mud that would create conditions that result in the generation of material that will become airborne. Not all vehicles are included in this rule. The rule is limited to commercial and business vehicles. IDEM anticipates that such measures as wheel washing, road cleaning, and other available techniques will be used to prevent mud tracking.

### **Miscellaneous**

*Comment:* Revise Sections 2 and 3 of this rule to use small case letters rather than numbers to identify the primary subdivisions of these sections. (AEP)

*Response:* The drafting style of a rule is under the control of the Legislative Services Agency, the publisher of the Indiana Register. In this particular case, lower case letters are only used after a section number to indicate a subsection. Sections 2 and 3 do not require subsections.